Supreme Court, U.S.
FILED
07-994 NOV 27 2007
OFFICE OF THE CLERK

No. _____

In The Supreme Court of the United States

TSEPHANYAH Y. HAWKINS, *et al*,
Petitioners,

v.

THE HONORABLE JOHN W. WEEKS, *et al*,
Respondents.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. Is a state judge immune from suit for damages caused by a court order if the judge signed that court order ex parte without notice, hearing, or presence of the proper party of that order, particularly if that order deprived that proper party of virtually all of his property and other rights, and when that proper party of that order rightfully owned and possessed the subject matter of the order?

2. When determining if a judge is immune from a lawsuit for damages, is the court required to rationally analyze the allegations of the complaint to determine whether, at the time of the challenged action, the defendant judge had jurisdiction over the subject matter before him?

3. Is knowingly forcing labor by means of state civil court order a violation of 18 U.S.C.S. § 1589, and, therefore, a cause of action under 18 U.S.C.S. § 1595?

4. Does 18 U.S.C.S. § 1589 create a jurisdictional bar against court orders that unlawfully enslave such that if a judge signs an order that enslaves an individual in violation of 18 U.S.C.S. § 1589, is that judge acting in a clear absence of all jurisdiction, and is he, therefore, not immune from a lawsuit for damages caused by that order?

5. If an attorney knowingly writes, requests, and obtains a state civil court order in violation of 18

U.S.C.S. § 1589, is that attorney a state actor for 42 U.S.C.S § 1983 purposes?

6. Are attorneys immune from a lawsuit for damages if they knowingly obtain a state civil court order with the intent of forcing an individual to work against their will?

7. Can persons who conspire across state lines to enslave an individual by means of a state civil court order be brought into the forum where the state court order was issued? Are individuals who do so in their official corporate capacity protected by the fiduciary shield doctrine?

8. Is the systemic cumulative diminution of time suffered by pro se litigants because they are not allowed to file via electronic case file a violation of due process requirements?

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

The parties to the proceeding in the court whose judgment is sought to be reviewed are as follows.

Petitioners and Appellants below: Tsephanyah Y. Hawkins, Yahchanan Y. Hawkins

Respondents and Appellees: The Honorable John W. Weeks, Victoria L. Carter, Marilyn Gardner, John A. Chistolini, S.A.W. Solutions, Inc., South Carolina School of Court Reporting, Inc., Chistolini and DeSimone, Inc., The National Institute of Realtime Reporting, Inc., Charles C. Self, III, Donald Anderson, Jr., Whitten and Young, P.C., and (n/k/a Whitten Law Firm).

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1. The Court should grant certiorari to clarify that, pursuant to this Court's previous decisions, when a 12(b)(6) motion raises the issue of judicial immunity, it is necessary to presume that the allegations of the complaint are true, and then to rationally analyze the allegations of the complaint to determine whether the defendant judge had jurisdiction over the subject matter before him at the time of the challenged action. 29

2. This Court should grant certiorari because the Fifth Circuit Court of Appeals has overturned the Thirteenth Amendment of the United States Constitution. There is now no recourse for a victim enslaved by means of state civil court order, even if that order was obtained without providing the victim notice, a hearing, and without his presence.....34

3. The Court should grant certiorari to clarify whether a person who knowingly forces an individual to perform labor or services against their will by means of a state court order is a state actor for purposes of any 42 U.S.C.S. § 1983 claims that may arise from damages caused to the victim by that order. 36

4. The Court should grant certiorari because the panel below finds that no claim exists when out of state persons conspire with in-state individuals to enslave other in-state individuals by means of civil court order. For such wrongful actions, consistent with this Court's previous findings, there should be no fiduciary shield. This Court's supervision is needed. 38

5. The Court should grant certiorari because, by the decision below, the Fifth Circuit has allowed district courts to, without cause, ban pro se litigants from filing via Electronic Case File while allowing attorneys to file using the system. Such unequal access to the courts invariably leads to a systemic cumulative diminution of the pro se litigant's time to the degree that it can affect the outcome of litigation, as it has in this case. 39

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

This petition seeks a writ of certiorari to the Fifth Circuit Court of Appeals for review of several judgments involving identical or closely related questions. The judgments are as follows:

The Fifth Circuit Court of Appeals case numbers are 06-10544, 06-10783, and 06-10980. The opinions are unpublished. They were filed on July 30, 2007. Copies of those opinions are provided in the appendix to this petition. Each opinion states "[f]or the reasons stated by the district court below, we affirm."

The Fifth Circuit denied Appellants' petitions for a rehearing. The orders denying those petitions were filed on August 29, 2007 for cases 06-10544 and 06-10783, and on August 30, 2007 for case 06-10980. A copy of those orders is provided in the appendix of this petition.

The United States District Court for the Northern District of Texas, Abilene Division case number is 1:05-CV-184. The relevant opinions are unpublished, but the first was filed on January 20, 2006. The appeal of that order was case 06-10544. The second was filed on June 16, 2006. The appeal of that order was case 06-10783. And the last was filed on July 13, 2006. The appeal of that order was case 06-10980. Copies of those opinions are provided in the appendix to this petition.

STATEMENT OF BASIS FOR JURISDICTION

The Fifth Circuit issued its opinions in this matter on July 30, 2007 for cases 06-10544, 06-10783, and 06-10980. They denied Petitioners' timely motions for rehearing on case 06-10544 and 06-10783 on August 29, 2007. And on August 30, 2007, they denied Petitions' timely motions for rehearing for case 06-10980. This Court has jurisdiction under 28 U.S.C. § 1254. This Petition and Appendix was originally mailed via United State First Class Mail on November 27, 2007. It was returned by the clerk because of format non-compliance. Pursuant to rule 14.5, this corrected version is filed timely.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS

This case involves the following constitutional provisions, and statutes.

1. The Thirteenth Amendment to the United States Constitution:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime where of the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

2. The Trafficking Victims Protection Act of 2000, 18 U.S.C. § 1589:

> Whoever knowingly provides or obtains the labor or services of a person –
>
> (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

3. The Trafficking Victims Protection Reauthorization Act of 2003, 18 U.S.C. § 1595:

> (a) An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

(b)(1) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. (2) In this subsection, a "criminal action" includes investigation and prosecution and is pending until final adjudication in the trial court.

4. The Ku Klux Klan Act of 1871, 42 U.S.C. § 1983;

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

A. Factual Background

In August of 2003, the National Institute of Realtime Reporters, Inc., ("NIRR") of Massachusetts, then known as the New England School of Court Reporting, Inc., verbally contracted to purchase twenty "Techlennium" computerized court reporting systems from Courtroom Data Solutions, Inc., ("CDS"), then known as StenoScribe, Inc., of Texas at a price of about thirty-five hundred dollars ($3500.00) apiece. NIRR represented to CDS that it intended to purchase about twenty Techlenniums every other month for an indefinite term. NIRR represented to CDS that if CDS shipped twenty systems in September of 2003, over half of those twenty systems would be paid in full by October 1st, 2003. CDS agreed to ship the first twenty systems with the understanding that future shipment terms would depend upon NIRR's compliance with its promise to pay for half of the systems by October 1, 2003. Upon that representation, CDS agreed to make the first shipment. By October 1, 2003, only three of the twenty systems were paid for—$10,500.00 of the $70,000.00 owed.

Tsephanyah Hawkins, president of CDS and developer of the Techlennium, informed the saleswoman involved in the transaction, Claudia Hutchison ("Hutchison", herein), that he was dissatisfied with the payments being made by NIRR, and that it would be unlikely that he would approve the shipment of another order to NIRR unless the order was prepaid or the payment otherwise assured

to his satisfaction. CDS never approved another shipment.

On or about October 7, 2003, Hutchison informed Tsephanyah Hawkins that she had personally received a $7000.00 check for money owed to CDS from NIRR. NIRR had sent the check directly to Hutchison, instead of sending it to CDS's post office box. Tsephanyah Hawkins demanded that Hutchison hand over the check. She refused, and stated her attorney had the check. At that point, the President of CDS, Tsephanyah Hawkins, terminated Hutchison's services.

Shortly thereafter, Tsephanyah Hawkins contacted Marilyn Gardner ("Gardner", herein), president of NIRR, by telephone and requested that she stop payment on the $7000.00 check and issue a new check and send it to the usual Abilene, Texas post office box to which Gardner had previously sent checks for payments due CDS. Gardner stated that she would do that. Tsephanyah Hawkins informed Gardner that Hutchison was no longer working with CDS. Gardner inquired about a future order of Techlenniums similar to the last one. She wanted to know if it was possible to get twenty more systems. Tsephanyah Hawkins informed her that he would need further payments on the first order and a written purchase order subject to his approval before making any further shipments to NIRR (of the 20 systems previously shipped, only three had been paid for). She acted friendly and agreeable to that requirement and stated she would send a written purchase order. She reiterated her intent to cancel the $7000.00 check and stated she would reissue

that check, and send it to Post Office Box 839, Abilene, Texas. She also promised to send more checks to that same Post Office Box. Neither Tsephanyah Hawkins nor CDS ever received a written purchase order, nor did they receive another check from NIRR.

At 6:00 p.m. on Friday, October 10, 2003, Tsephanyah Hawkins was unexpectedly served at his home with a court order[1]. App. 43a[2]. By the terms of that court order, Tsephanyah Hawkins individually was ordered to cease selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of his property, whether personalty or realty. He was ordered to cease making withdrawals of any type from any checking or savings account in any financial institution for any purpose, and, he was individually ordered to fulfill obligations or commitments to customers of CDS, specifically, but not limited to the National Institute of Realtime Reporter's, Inc., then known as the New England School of Court Reporting, Inc., NIRR, herein.

The order was signed earlier that day ex parte at 8:45 a.m. on October 10, 2003 by The Honorable John W. Weeks, a state of Texas judge of the 42nd judicial district of Callahan County, Texas. Hutchison requested the court order. And she requested, through her attorney Victoria L. Carter ("Carter", herein), that it be issued ex parte. At 1:40

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[1] That order was included as an exhibit to Plaintiffs' federal complaints.

[2] Citations to "App." indicate the Appendix to this Petition.

p.m., that order, and Hutchison's original petition were filed with the clerk of the 42nd judicial district court of Callahan County, Texas, after the order had been signed by Judge Weeks. Hutchison was the plaintiff in the original petition. Tsephanyah Hawkins individually, and StenoScribe, Inc., ("CDS"), were the defendants.

Prior to being served with the order, Tsephanyah Hawkins had made no appearance in the state court. He had received no notice that the order was being requested. He had received no notice that a petition was being filed, that it had been filed, or that a state lawsuit had commenced against him. He had not been served with any process. He was unaware of any hearing. At the time of the signing of the order, Tsephanyah Hawkins was available for service and process. His availability was known to Hutchison. Her motion for the ex parte court order made no assertion that Tsephanyah Hawkins was not available for service of process, nor that he had been served.

Immediately, Tsephanyah Hawkins began fulfilling the order's terms. Against his will, he ceased using bank accounts, including his own, personal bank accounts. He ceased transferring any of his property. He performed labor for National Institute Realtime Reporters, Inc., Though the order was served upon Tsephanyah Hawkins on Friday, October 10, 2003, on Monday, October 13, 2003, Tsephanyah Hawkins received a letter from Carter threatening him with contempt action if he did not hurry and complete work on twenty systems for the National Institute of Realtime Reporters, Inc.

> "To prevent further action for contempt and to amicably resolve the issues, I request, on my client's behalf, that by Tuesday morning, you hand deliver the credit card machine to the business building, that you provide 22 keys to the software to complete the approved New England School of Court Reporting contract (StenoScribe, Inc. owes 2 keys for the last order), and produce 21 Sound enhancers for the approved New England School of Court reporting contract."

Plaintiffs alleged that the state court order was part of a conspiracy to force Tsephanyah Hawkins to produce and ship twenty Techlennium Systems to NIRR in Massachusetts, plus two loaner systems to NIRR. NIRR needed the systems, they didn't have the money. Only Tsephanyah Hawkins and Yahchanan Hawkins were capable of producing the systems, and they were refusing to produce and ship them because of NIRR's failure to pay for the first twenty two systems shipped.

An amplifier marketed as a Sound Enhancer was necessary for the Techlennium system. Because of the threats against Tsephanyah Hawkins' liberty imposed by the court orders – to help keep him out of jail, Yahchanan Hawkins produced the Sound Enhancers with Tsephanyah Hawkins' help.

After laboring to fulfill the terms of the court order for about a week, and performing services and labor including but not limited to programming software protection keys, and producing Sound Enhancers, Tsephanyah Hawkins obtained counsel.

Counsel informed him that if he didn't work, he would face contempt and jail. When Tsephanyah Hawkins questioned his attorneys Charles C. Self, III, and Donald Anderson, Jr., about how a judge could make such a sweeping order against him without notice or a hearing, they informed Tsephanyah Hawkins that judges can do whatever they want to do. The hearing on the "Temporary Restraining Order" was originally set for October 22, 2003, but the order was extended and the hearing reset to November 4, 2003, ex parte, by The Honorable John W. Weeks. After the hearing, the order was again extended by Judge Weeks. Neither Charles C. Self, III nor Donald L. Anderson, Jr., nor any attorney with the Whitten Law Firm suggested or attempted any extraordinary relief or collateral attack on the court orders. As a result Tsephanyah Hawkins and Yahchanan Hawkins were seriously damaged by the unbridled force of the state court.

On or about October 15, 2003, John Chistolini ("Chistolini", herein), attorney for NIRR, and, incidentally, Attorney Gardner's husband, wrote to Tsephanyah Hawkins:

> "As you are aware, Attorney Victoria Carter's office is holding funds in Escrow pending a resolution to the litigation. In addition to the funds that Attorney Carter is holding, we forwarded to Attorney Carter on October 14, 2003, an additional draft in the amount of Fourteen Thousand ($14,000.00) Dollars, which also will be held in Escrow."

Instead of being held in escrow, the money was deposited into Hutchison's personal bank account established as Hutchison DBA StenoScribe. Defendants represented to Tsephanyah Hawkins that those funds were being held in escrow by Carter when they knew that those funds were not in escrow. In February of 2004, Gardner gave Hutchison some of the Techlenniums that had been produced by the forced labor of Tsephanyah Hawkins and Yahchanan Hawkins. Hutchison then sold those systems for her own profit.

On May 20, 2004, over objection of counsel, The Honorable John W. Weeks issued a temporary injunction ordering Tsephanyah Hawkins individually to perform any work necessary for the functioning of Courtroom Data Solutions, Inc. A failure to "cooperate" with the receiver was punishable by contempt.

B. Proceedings Below

Tsephanyah Hawkins, Yahchanan Hawkins, and Courtroom Data Solutions, Inc. filed a lawsuit on October 7, 2005 in the federal district court of the Northern District of Texas, Abilene Division for deprivation of property without due process, forced labor, racketeering, and other connected causes. On October 18, 2005, Plaintiffs amended their Complaint. The complaints specifically alleged facts including those stated above in the "Factual Background" of this petition. Defendants named in the lawsuit included The Honorable John W. Weeks, Hutchison, her attorney Carter, The National Institute of Realtime Reporters, Inc., Chistolini,

Gardner, Chistolini and DeSimone, Charles C. Self, III, Donald Anderson, Jr., Whitten and Young, P.C., and others. The basis for the federal district court's jurisdiction were 18 U.S.C §1595, 28 U.S.C § 1331, 28 U.S.C. § 1343, 18 U.S.C. § 1961, et seq., and 28 U.S.C. § 1367.

On November 14, 2005, the federal district court dismissed the claims of Courtroom Data Solutions, Inc. because it failed to appear by attorney. That dismissal is not at issue in this petition.

Defendant The Honorable John W. Weeks

On November 1, 2005, The Honorable John W. Weeks filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. He briefly argued that because the offending orders were related to controversies in a pending state lawsuit, and because he had signed them in his chambers, and because he was a state of Texas district court judge, he had jurisdiction. He was, he argued, therefore, entitled to judicial immunity.

As alleged in their complaint, Plaintiffs argued that at the time Judge Weeks signed the ex parte order, there was no state lawsuit, and there was no relevant visit to his courtroom. Plaintiffs argued that judicial immunity's threshold question is whether Judge Weeks had jurisdiction over the subject matter before him at the time of his challenged action, and that the answer to the threshold question could only be found by a reasoned application of subject matter jurisdiction's three essentials to the facts alleged in the federal

complaint. A clear absence of any of the three essentials, Plaintiffs' argued, would demonstrate a clear absence of subject matter jurisdiction.

As alleged in Plaintiffs' First Amended Complaint, the first order was signed by Judge Weeks ex parte prior to the serving of any process, and without any notice to Tsephanyah Hawkins. It was signed prior to the commencement of any lawsuit. It was not connected to any pending lawsuit. It was signed prior to the filing of any petition. It was signed without the presence of the proper party Tsephanyah Hawkins. And the subject matter of the court order was in the possession of, and owned by, Tsephanyah Hawkins. A proper and necessary party was clearly not present, and had not made an appearance. Therefore, argued Plaintiffs, at the time he signed the first order, 8:45 a.m. on October 10, 2003, Judge Weeks clearly did not have jurisdiction over the subject matter before him. That the signed order was served on Tsephanyah Hawkins several hours later did not retroactively grant Judge Weeks jurisdiction for his ex parte action earlier that day.

The indisputable absence of Tsephanyah Hawkins at the time of the challenged action was enough, argued Plaintiffs, to demonstrate a clear absence of all jurisdiction. However, Plaintiffs also showed that judge Weeks' action was jurisdictionally barred by the Thirteenth Amendment of the United States Constitution, and by 18 U.S.C.S. § 1589 because the language of that statute and the Supreme Court's interpretation of the Thirteenth Amendment prohibit the obtaining or providing of

labor or services by means of abuse or *threatened* abuse of the law or the legal process. A state judge, therefore, cannot take cognizance over a petition to enslave. Moreover, because the proper party was not present for the signing of the ex parte order and because of federal jurisdictional bars against forced labor, the points decided by the ex parte order were not, in substance and effect, within the issue.

Judge Weeks clearly lacked all three of subject matter jurisdiction's essentials at the time he signed the first of the challenged orders. For the other orders, he clearly lacked at least one of those essentials.

On January 20, 2006, the federal district judge dismissed the claims against The Honorable John W. Weeks because of judicial immunity. App. 4a. The decision contained no rational analysis of the allegations of the complaint showing that, at the time of the challenged action, the defendant judge had jurisdiction over the subject matter before him. Plaintiffs appealed.

On appeal, Plaintiffs and Judge Weeks made the same arguments that they had made to the district court. Judge Weeks added to his arguments the contention that the order of October 10, 2003 was a temporary restraining order, and, therefore, notice, hearing, a lawsuit, and Tsephanyah Hawkins' presence were not necessary. Plaintiffs argued that the order was a temporary restraining order in name only. It is the character and function of an order that determine its classification. *Del Valle Independent Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992).

The controlling factor is whether the relief granted does more than preserve the status quo during the ten day span of a temporary restraining order. *Plant Process Equip., Inc. v. Harris*, 579 S.W.2d 53, 54 (Tex. App. 1979). The order went far beyond maintaining the status quo. It clearly deprived Tsephanyah Hawkins of property and other rights. It was clearly not a temporary restraining order.

On July 30, 2007, without reasoned analysis, the Fifth Circuit Court of Appeals affirmed the district court's decision for the reasons given by the district court. App. 1a. A petition for rehearing en banc was timely filed by Plaintiffs. It was denied on August 29, 2007. App. 37a.

Defendant Victoria L. Carter

On October 31, 2003, defendant Carter, the attorney who requested the state court orders, filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. While admitting that she obtained the offending court, she contended that Tsephanyah Hawkins knew, or should have known that the orders were void and unenforceable, and, therefore, his labor was not forced. She also argued that intent to commit an unlawful act had not been alleged.

Plaintiffs responded that they had plainly alleged that Tsephanyah Hawkins performed services and labor because of the threat imposed by the ex parte court order. Plaintiffs also pointed out that, as alleged in their amended complaint, Yahchanan Hawkins performed services and labor so that

Tsephanyah Hawkins would not go to jail. The complaint also plainly alleged that Tsephanyah Hawkins did not know the order was void, and he performed services and labor because he believed he would go to jail if he didn't perform them. Plaintiffs also argued that criminal intent is implicit in the allegation that Carter intentionally obtained a court order with the intent of unlawfully enslaving Tsephanyah Hawkins. The order was signed at her request. It was then served upon Tsephanyah Hawkins who performed services and labor because of the terms of the order. An actionable damage was alleged, and it was caused by a corrupt concerted action between the person who requested the order, Carter, and the state judge who signed it, Judge Weeks. That corrupt action is the obtaining or providing of labor or services by means of abuse or threatened abuse of the law or legal process in violation of 18 U.S.C.S. §1589. There is, Plaintiffs' argued, therefore, a cause of action pursuant to 18 U.S.C.S § 1595 against the attorney who requested the order and the judge who signed it. And the attorney who requested the order is a state actor for 42 U.S.C.S. §1983 purposes. Under such circumstances, the enslavement, and other rights violations caused by the court order, were performed under color of state law by both the judge and the attorney requesting the order.

Plaintiffs' claims against attorney Carter were dismissed with the same order dismissing claims against The Honorable John W. Weeks. App. 4a. The federal district court briefly stated that Plaintiffs did not allege facts to establish each and

every element under 18 U.S.C.S. § 1595. App. 15a-18a. The district court found that Plaintiffs failed to allege that there was a specific intent to accomplish an unlawful act. Plaintiffs appealed.

To the panel below, Carter argued that 18 U.S.C.S. §§1589, and 1595 only applied to migrant workers, and that prohibitions against forced labor cannot be reasonably applied to a lawyer seeking and obtaining a court order controlling a parties' conduct during litigation. She argued that if that were the case, every party affected by a restraining order would possess a potential claim against a judge, the party seeking the order, and opposing counsel under 18 U.S.C. 1595. She also argued that she is not a state actor.

Plaintiffs replied that there is no requirement in 18 U.S.C.S. §§1589, and 1595 that the victim be a "migrant worker", and if those sections did not apply to lawyers who unlawfully enslave others by means of court order, then involuntary servitude has not been abolished; the civil war was fought for nothing, and the Thirteenth Amendment is a nullity. Plaintiffs further replied that the fact that it is unlawful for attorneys to enslave by court order does not mean "every party affected by a restraining order" has a forced labor claim.

To the argument that Carter was not a state actor, Plaintiffs made the same argument that they made to the district court.

The Fifth Circuit affirmed. App. 1a. A petition for rehearing was denied. App. 37a.

Defendants Chistolini, Gardner, and Chistolini and DeSimone, Inc.,

On October 31, 2003, defendants Chistolini, Gardner, and Chistolini and DeSimone, Inc., moved to dismiss for lack of personal jurisdiction. They argued that Gardner could not have anticipated being haled to Texas for merely "ordering court reporting software", and that they each lacked "the requisite minimum contacts with the forum State of Texas that would allow the exercise of personal jurisdiction without offending traditional motions of fair play and substantial justice." They also raised fiduciary shield doctrine.

Their motion was supported by the affidavits of Chistolini, and Gardner. Neither affidavit denied the factual allegations plausibly supporting the allegations that they had conspired with Carter and others to obtain the services or labor of Tsephanyah Hawkins by means of abuse or threatened abuse of the law or the legal process. Indeed, neither affidavit denied conspiring. Both only denied having traditional contacts with the forum State of Texas that would allow forum jurisdiction.

Both sides agreed that a jurisdictional issue may be resolved by the court by reviewing pleadings, affidavits, interrogatories, depositions, oral testimony, exhibits, any part of the record, and any combination of the above. *Command-Aire, Corp v. Ontario Mechanical Sales and Service, Inc.* 963 F.2d 90, 95 (5th Cir. 1992). Allegations in the plaintiff's complaint will be taken as true except to the extent that they are contradicted by defendant's affidavits.

White v. Caplin, 686 F.2d 276, 282-283 n.13 (5th Cir. 1982). Conflicts between the facts established by the parties' affidavits and any other evidence are resolved in favor of the plaintiff for the purpose of determining whether a prima facie case exists. *Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990).

Plaintiffs argued that defendants Chistolini, Gardner, and Chistolini and DeSimone, Inc., failed to deny the allegations that they purposefully conspired with persons in Texas to abuse the powers of a State of Texas District Court Judge to obtain the in-Texas forced labor of residents of the State of Texas.

Plaintiffs also argued that defendants failed to deny the factual allegations of the complaint that plausibly supported the allegations of that conspiracy and their participation in it. Such allegations included that the president of NIRR, Gardner, agreed by phone conversation with Tsephanyah Hawkins on or about October 8, 2003 to cancel the $7000.00 check that Hutchison had "diverted", to reissue that $7000.00 check and send it to CDS's post office box, and to send a written purchase order to CDS for the twenty Techlennium systems she (NIRR) wanted to purchase. She did not deny having that conversation, agreeing to those things, or that she failed to do those things.

Also, she did not deny that Chistolini, NIRR's attorney, sent an additional $14,000.00 to Hutchison's attorney Carter. A few days after that, he sent a letter threatening that NIRR would file a

lawsuit against Tsephanyah Hawkins if he didn't produce and ship twenty more systems to NIRR by on or about October 22, 2003.

Also, they did not deny representing an "Escrow", and that the "Escrow" did not exist. Indeed, Carter has pled that she never had an escrow. The checks from NIRR represented by Chistolini as being held in escrow totaling $21,000.00 were cashed by Hutchison on or about October 23, 2003, through a checking account she had set up in the name of "StenoScribe", a DBA she had established to cash the checks belonging to CDS, formerly known as StenoScribe, Inc.

Also, Hutchison traveled to Massachusetts in February of 2004 after depleting the funds belonging to CDS that were deposited in her "Hutchison DBA StenoScribe" account that were supposedly in "Escrow". Once in Massachusetts, she received from Gardner several of the Techlennium systems shipped under the terms of the ex parte court order. So by means of the enslaving court order, Gardner and NIRR obtained some Techlennium Systems; and Hutchison obtained some systems and cash. CDS, Tsephanyah Hawkins, and Yahchanan Hawkins received nothing for their labors. Those allegations were not denied under oath.

Gardner and Chistolini did not deny refusing to disclose to CDS or Tsephanyah Hawkins who the "students" were that ultimately received the Techlennium systems. As alleged in Plaintiffs First Amended Complaint, their refusing to identify students was to hide the Techlennium systems after

hey had crossed state lines. In their affidavits, Chistolini and Gardner did not even deny conspiring.

The allegations of facts that plausibly support the conspiracy must be considered as true. A reasonable jury could certainly have found that a conspiracy existed and that Gardner, Chistolini, and his law firm Chistolini and DeSimone culpably participated in that conspiracy. Therefore, those defendants were not entitled to a dismissal because those allegations plainly plausibly support the underlying allegation that they were culpably involved in the conspiracy to force the labor and services of Tsephanyah Hawkins by means of abuse or threatened abuse of the Texas legal process.

Specific personal jurisdiction exists over Defendants in this case because the controversy arises out of Defendants' purposeful contacts with the forum and because of the nature of the relationship among the Defendants, the forum, and the litigation.

Plaintiffs also argued that the defendants' status as employees does not somehow insulate them from jurisdiction. Each defendant's contacts with the forum State must be assessed individually. *Calder v. Jones*, 465 U.S. 783, 791 (1984).

Defendants also argued that they could not be subject to a lawsuit for forced labor by court order because they were not a party to the petition for that court order. However, Plaintiffs argued, those defendants did benefit from the court order, and they were, as alleged in Plaintiffs' First Amended Complaint, involved in the various artifices used in

conjunction with the court order to extract labor and services from Tsephanyah Hawkins by means of abuse or threatened abuse of the law or the legal system, and they were involved in transporting the fruits of the labor across state lines. They were also involved in concealing the whereabouts of the systems produced by that forced labor. And they paid Hutchison and Carter for their services in obtaining that labor, and hid the financial transactions by means of a pretended escrow account.

The district court dismissed for the reasons stated in the defendants' motion to dismiss. App. 9a. Plaintiffs appealed.

On appeal, both sides argued substantially the same arguments that they did at the trial court level. The Fifth Circuit affirmed the trial court's dismissal for the reasons stated by the trial court. App. 1a. A petition for rehearing was denied. App. 37a.

Defendant National Institute of Realtime Reporting, Inc.

On March 29, 2006, NIRR moved for summary judgment on the grounds that (a), it was "not a party to the Texas State Litigation and did not participate in the conduct in the Texas State Litigation alleged to support most of the Plaintiffs' causes of action, (b) Plaintiffs were not a party to the agreement for [NIRR] to purchase court reporter software from StenoScribe, Inc., and (c) Plaintiffs cannot establish one or more of the essential elements of their causes of action against [NIRR]". The only evidence in

support of the motion was an affidavit of Gardner. In her affidavit, the only material denial was Gardner's denial of knowledge of the state lawsuit, however, she does not deny any of the factual allegations that, by themselves, support the plausibility of the contention that she was knowingly involved, culpably participated, and benefited from the conspiracy to force Tsephanyah Hawkins to labor by means of a state court order. Also, there was no affidavit from Chistolini nor was there any denial that he was involved in the conspiracy. And the discovery period, pursuant to the district court's scheduling order, had five and a half months remaining.

In response, Plaintiffs provided their own affidavits. Tsephanyah Hawkins swore details of the phone conversation with Gardner, about her agreeing to cancel the check, send another check, and send a written purchase order. He also swore that neither he nor CDS received any of those things. He also swore that he labored because of the court order, and that within days of his conversation with Gardner, he received threats of contempt from Carter if he did not perform the labor necessary to produce the court reporting systems for NIRR.

Plaintiffs argued the elementary principle that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done. Gardner's denial that she knew about the Texas litigation did not demonstrate an absence of any genuine issue of material fact.

Plaintiffs also argued that it was too early for a

summary judgment on such grounds because the discovery period still had five and a half months remaining at that point.

The district court dismissed the claims against NIRR for the reasons stated in NIRR's motion for summary judgment. App. 25a. Plaintiffs appealed.

On July 29, 2007, the Fifth Circuit Court of Appeals, affirmed the district court's dismissal with the language "[f]or the reasons stated by the district court below, we AFFIRM". App. 2a. A petition for rehearing was denied. App. 39a.

Defendants Charles C. Self, III, Donald Anderson, Jr., Whitten and Young, P.C.

Charles C. Self, III, Donald Anderson, Jr., and Whitten and Young, P.C., n/k/a Whitten Law Firm (Collectively, "Law Firm") filed a motion for summary judgment on June 22, 2006. It was filed with almost four months left in the discovery schedule. Their summary judgment evidence consisted of an affidavit of expert witness Allen R. Weed, and an affidavit of Charles C. Self, III, who felt he did not perform negligently in his representation of Tsephanyah Hawkins in the Texas litigation.

In response to the motion, Plaintiffs filed a rule 56(f) motion to enlarge time with a Rule 56(f) affidavit. Those were filed prior to the expiration of the deadline for a response.

Plaintiffs argued that the party responding to a motion for summary judgment is "entitled to receive a continuance for additional discovery if they: (i)

requested extended discovery prior to the court's ruling on summary judgment; (ii) placed the district court on notice that further discovery pertaining to the summary judgment motion was being sought; and (iii) demonstrated to the district court with reasonable specificity how the requested discovery pertained to the pending motion. *Chevron U.S.A., Inc. v. Traillour Oil Co.*, 987 F.2d 1138, 1155-56 (5th Cir.1993); *Wichita Falls*, 978 F.2d at 919 (citing *Int'l Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257 (5th Cir.1991))." *Enplanar, Inc. v. Marsh* 11 F.3d 1284 C.A.5 (La.),1994.

Tsephanyah Hawkins requested time for discovery on July 12, 2006. That was prior to the court's ruling on summary judgment on July 13, 2006. It was prior to the expiration of the twenty day motion response time allotted by the local rules. Tsephanyah Hawkins placed the district court on notice that further discovery pertaining to the summary judgment motion was being sought; and he demonstrated to the district court with reasonable specificity how the requested discovery pertained to the pending motion.

Plaintiffs argued that Defendants' expert Witness, Mr. Allan Weed, was disclosed only 27 days before Tsephanyah Hawkins filed his motion for an extension of time. That was not a reasonable length of time for Tsephanyah Hawkins, a pro se litigant to have scheduled a deposition and prepared all the questions for the deposition, and to have written a response to the motion summary judgment within less than a month, especially when one considers the complexity and size of the underlying litigation. At

the time the Law Firm filed their motion, there were still over four months remaining for discovery, and Tsephanyah Hawkins was using his time as efficiently as possible by defending against motions to dismiss, planning discovery requests and strategy, and diligently attempting to find an expert witness. Significantly, Plaintiffs were at a serious time disadvantage because they were denied permission to file via ECF. All defendants had permission.

Because of those things, Tsephanyah Hawkins' motion for an extension of time should have been freely granted. "We review the denial of a Rule 56(f) motion for abuse of discretion. *See, e.g., Fontenot v. Upjohn Company,* 780 F.2d 1190, 1193 (5th Cir.1986). Such motions are generally favored, and should be liberally granted. *See International Shortstop, Inc. v. Rally's Inc.,* 939 F.2d 1257, 1267 (5th Cir.1991)." *Stearns Airport Equipment Co., Inc. v. FMC Corp.* 170 F.3d 518 C.A.5 (Tex.),1999.

Tsephanyah Hawkins explained that he needed time to research the complex issues raised by the Law Firm's motion. In his motion for an extension of time, Tsephanyah Hawkins stated that "[t]he requested enlargement will not prejudice Defendants because there is no trial date set and the case is still in the midst of the scheduled discovery period." He stated, "[m]oreover, Defendants' Motion for Summary Judgment and its concurrently filed documents exceed 175 pages." ... "Defendants raise numerous complex issues in their Motion to Dismiss" . . . "Plaintiffs need time to research and adequately and fully respond to those issues."

He also raised the issue of the disadvantage he was suffering because pro se litigants were denied access to Electronic Case File, while parties with attorneys could file via Electronic Case File. He argued that it resulted in a systemic cumulative diminution of Plaintiff's time that is a due process denial that had negatively impacted Plaintiff's ability to timely respond to motions, particularly complex motions. Earlier in the case, Plaintiffs' argued for access to Electronic Case File pointing out the many "advantages of the system", as they are called by the district court's instructional video on the subject. Initially, the district court granted Plaintiffs permission to file via Electronic Case File. But before they used the system, the district court reversed its permission and thus began a systemic cumulative diminution of Plaintiffs' time that quickly reached a critical point. This, argued Plaintiffs, entitled them to an extension of time to respond to the Law Firm's motion for summary judgment.

The day after Plaintiffs moved for time, the district court dismissed their claims against the Law Firm. App. 34a.

Plaintiffs timely filed a motion to reconsider the dismissal, and, in the appendix to that motion, they filed a response to The Law Firm's motion for summary judgment. That response was concurrently filed with an appendix containing the expert affidavit of the expert attorney Jeff Forest Smith absolutely demonstrating genuine issues of material fact with regard to whether The Law Firm performed negligently in their service to Tsephanyah

Hawkins. Plaintiffs also definitively demonstrated that the expert affidavit of Allen R. Weed was based upon facts not in evidence. The district court denied the motion to vacate the dismissal. Plaintiffs appealed.

Essentially the same arguments were made on appeal. The Fifth Circuit affirmed. App. 3a. A petition for rehearing was denied. App. 41a.

REASONS FOR GRANTING THE PETITION

The finding that Judge Weeks is immune from a lawsuit for damages raises important issues of constitutional dimension. The Fifth Circuit's failure to rationally apply judicial immunity's necessary inquiry to the allegations of Plaintiffs' First Amended Complaint, their failure to take the allegations of that complaint as true, their grant of judicial immunity to a judge who plainly acted in a clear absence of all jurisdiction, their failure to recognize the jurisdictional and substantive prohibitions against judicially imposed forced labor, and the clearly substandard judicial treatment received by Plaintiffs, all raise important and recurring due process and separation of powers questions on which this Court's supervisory guidance is urgently needed.

Also, the lower panel's failure to recognize that forcing labor by means of a state court order is a violation of 18 U.S.C.S. § 1589 has severely distorted all of their decisions in this case. That is because the question of whether enslavement by means of court order is a wrongful act has implications in most of Plaintiffs claims. Because it fails to recognize the

wrongful nature of enslavement by court order, the panel below cannot make correct decisions with regard to fiduciary shield doctrine. It cannot make correct decisions in this case with regard to the doctrine that private parties can be considered state actors because of corrupt concerted actions with state officials. The failure to recognize enslavement by means of state court order as a violation of 18 U.S.C.S. § 1589 has caused the lower panel to make jurisdictional errors that have affected other issues in this case including but not limited to judicial immunity because 18 U.S.C.S. § 1589 clearly sets boundaries on the jurisdiction of state courts. The lower panel's incorrectly narrow perception of 18 U.S.C.S. § 1589's scope renders that panel unable to properly assess Plaintiffs' RICO claims because violations of 18 U.S.C.S. § 1589 were alleged as a predicate act in Plaintiffs' racketeering claims. The panel's failure to recognize the illegality of forcing labor by means of civil court order set in motion a cascade of errors requiring this Court's immediate attention. Indeed, it requires the reversal of all decisions below that dismissed Plaintiffs' claims. This Court's supervision is needed in this matter so other cases aren't likewise distorted.

1. The Court should grant certiorari to clarify that, pursuant to this Court's previous decisions, when a 12(b)(6) motion raises the issue of judicial immunity, it is necessary to presume that the allegations of the complaint are true, and then to rationally analyze the allegations of the complaint to determine whether the defendant judge had jurisdiction

over the subject matter before him at the time of the challenged action.

The decision of the panel below calls for an exercise of this Court's supervisory power because the panel below has so far departed from the accepted and usual course of judicial proceedings, and because the panel below has sanctioned such a departure by the trial court. The lower panel's decision directly contradicts decisions of this Court on important matters including judicial immunity, jurisdiction, and the standard of review of rule 12(b)(6) dismissals.

In previous cases, this Court has specified an inquiry that must be made when the question of judicial immunity is raised by a defendant judge in a lawsuit for damages against him. The *necessary inquiry* in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him *Stump v. Sparkman,* 435 U.S. 349, 57 (1978). In the case at bench, the panel below[3] failed to make the inquiry mandated by this Court in *Stump.*

Whether a defendant judge had jurisdiction over the subject matter before him cannot be properly addressed without an application of jurisdiction's essential elements to the facts alleged in the

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[3] The Fifth Circuit Court of Appeals' opinion stated only: "For the reasons stated by the district court below, we AFFIRM." App. 2a, App. 3a, App. 4a. Therefore, the district court's opinion is herein treated as though it was written by the Fifth Circuit Court of Appeals.

complaint. "Jurisdiction may be defined to be the right to adjudicate concerning the subject-matter in the given case. To constitute this there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudged belongs; second, the proper parties must be present; and third, the point decided must be, in substance and effect, within the issue." *Reynolds v. Stockton*, 140 U.S. 254, 68 (U.S. 1891).

Plaintiffs' First Amended Complaint plainly alleges facts convincingly demonstrating that the proper party, Tsephanyah Hawkins, was clearly not present when the ex parte order was signed against him. He had not made an appearance, and he had not been invited to appear. He was given no hearing. The complaint does not merely allege that the judge committed harmless procedural errors, rather, the allegations of the complaint plainly preclude any rational finding that Tsephanyah Hawkins was present. That is, at the time of the challenged act, he had not made an appearance, and because of that, it is not possible to find that the defendant judge had jurisdiction to order Tsephanyah Hawkins to cease from using his bank accounts, to cease from selling or transferring his property, and to fulfill obligations, individually, to customers of Courtroom Data Solutions, Inc.

In granting the defendant judge immunity, the Fifth Circuit evaded the question of whether the proper party was present when Judge Weeks took his challenged act. Instead, the Fifth Circuit observed that the challenged orders were "related to controversies in the state lawsuit". And they found

the defendant judge immune because he was a judge in his courtroom signing orders *connected* to a case. The panel below abandoned centuries of decisions where the issue of a defendant judge's immunity is necessarily determined by a careful scrutiny of the allegations of the complaint to ascertain whether the complaint shows that the judge acted in a clear absence of all jurisdiction at the time of his challenged act. A necessary element of that determination is whether the proper parties were present at the time of the challenged act.

Stump v. Sparkman, 435 U.S. 349 (1978), is one of the leading cases on judicial immunity. The case dealt with a damages suit against a judge by a woman who was sterilized by order of that judge. The order to sterilize her was signed by the judge without notice to the woman. She was not present, and she did not have a hearing on the matter. This Court found the judge immune, in large measure because the woman was not a necessary party to the hearing of the petition to have her sterilized. The woman's mother filed the petition when the woman was fifteen years old. And under Indiana law at the time, parents could consent to medical procedures for their children. Therefore, Judge Stump did not act in a clear absence of all jurisdiction because, for one essential thing, all the proper parties were present: the mother. The sterilized woman was not a proper party. Her presence was not an essential of jurisdiction over the subject matter of the petition to sterilize her.

The case at bench is different because the complaint convincingly alleged with substantial

detail that the defendant judge acted in a clear absence of all jurisdiction because the defendant judge acted against Plaintiff Tsephanyah Hawkins without his presence. It also alleged that Tsephanyah Hawkins was a necessary and proper party. Under such circumstances, Plaintiffs' claims should not be dismissed under rule 12(b)(6) on judicial immunity grounds unless, (a) it can be shown that the plaintiff has not sufficiently alleged that the proper party was clearly not present, or, (b) it can be shown that the language of the complaint demonstrates that the proper party was, indeed, present when the defendant judge took his challenged action. In their decision, the panel below attempted no such showing.

By their decision, the panel below demonstrates their lack of understanding of the character and nature of judicial immunity's necessary inquiry, their lack of understanding of the essentials of subject matter jurisdiction, and their improper approach to the review of 12(b)(6) dismissals. An urgent need for this Court's supervision over the Fifth Circuit in these matters is made apparent by the deficient rationale used by the lower panel in determining Judge Weeks' immunity. The Fifth Circuit's entire analysis of the allegations of Plaintiffs' First Amended Complaint with regard to the issue of judicial immunity follows[4]:

> In this case, Plaintiffs' various causes of action against Judge Weeks are connected with his handling of the state lawsuit over which he

[4] The Fifth Circuit adopted the district court's reasoning.

> presided. In that case, Judge Weeks acted within the scope of his judicial capacity. See Ballard, 413 F.3d at 515. Plaintiffs complain that Judge Weeks violated their rights by signing various orders in the state lawsuit. (See Pls.' First Am. Compl., ¶¶ 44, 84, 97, 149.) This Court concludes that those actions are normal judicial functions. The orders were related to controversies in the state lawsuit. Judge Weeks acted within his judicial capacity to decide whether to sign and issue the orders. Although Plaintiffs assert that Judge Weeks acted with a clear absence of all jurisdiction, Judge Weeks had jurisdiction over the parties and their claims to sign orders directly related to the pending business dispute. Since Judge Weeks has judicial immunity from suit and damages, this Court is of the opinion that Plaintiffs have failed to state any claim against Judge Weeks upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6); Ballard, 413 F.3d at 515.

By its reasoning, the Fifth Circuit Court of Appeals has established that judges have absolute immunity for actions ordinarily performed by a judge even if proper parties have received no notice, even if the proper parties have received no hearing, and even if the proper parties have not appeared. Thus, the Fifth Circuit Court of Appeals has impermissibly expanded the scope of judicial immunity well beyond its proper bounds.

2. This Court should grant certiorari because the Fifth Circuit Court of Appeals has overturned the Thirteenth Amendment of the

United States Constitution. By its decision below, there is no recourse for a victim enslaved by means of state civil court order, even if that order was obtained without providing the victim notice, a hearing, and without his presence.

The decision below contravenes the decisions of this Court and other courts on the scope of the Thirteenth Amendment of the United States Constitution, and its implementing statute 18 U.S.C.S. § 1589. By dismissing Appellants' forced labor claims, the Fifth Circuit Court of appeals has rejected the legislative judgment embodied in 18 U.S.C.S. § 1595 that a civil remedy in federal court should be available to individuals who have been presented with no available choice but to work or be subject to legal sanctions.

Tsephanyah Hawkins was plainly ordered to perform services and labor or face contempt of court. He performed those services and labor because of the threat of contempt imposed by the orders. Therefore, those who requested the orders, their attorney, and the judge who signed and issued the orders violated 18 U.S.C.S. § 1589, and, therefore, they are liable under 18 U.S.C.S. § 1595 to their victims. That is especially true in this case since it was alleged that the orders were obtained with the intent of forcing Tsephanyah Hawkins to perform services and labor against his will, and they were obtained without notice to him, and without his presence.

The Court should grant certiorari to confirm that when a person chooses to abuse the civil legal process to obtain or provide the labor or services of another against their will, those who so abuse the civil legal process are subject to a federal lawsuit for the damages caused by their actions even if they are an attorney, a judge, or an individual working in conspiracy with an attorney or a judge.

3. The Court should grant certiorari to clarify whether a person who knowingly forces an individual to perform labor or services against their will by means of a state court order is a state actor for purposes of any 42 U.S.C.S. § 1983 claims that may arise from damages caused to the victim by that order.

This Court has routinely held that to act "under color of" state law for 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. See *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966). Of course, merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge. *Dennis v. Sparks*, 449 U.S. 24, 29 (1980). But when a person successfully resorts to the state courts to unlawfully enslave an individual, that should be another story. In the Fifth Circuit, it isn't.

18 U.S.C.S. § 1589 plainly criminalizes knowingly providing or obtaining the labor or services of a person by means of the abuse or threatened abuse of

law or the legal process. In the case at bench, Plaintiffs alleged that Carter knowingly obtained or provided the labor of Tsephanyah Hawkins by means of abuse or threatened abuse of the law or the legal process by intentionally writing a series of court orders, requesting and obtaining a state judge's signature on those orders, and causing them to be served upon Tsephanyah Hawkins. Among other things, the orders ordered Tsephanyah Hawkins to fulfill obligations or commitments to customers of CDS, specifically, but not limited to the National Institute of Realtime Reporters, Inc.

Plaintiffs' allegations of enslavement by court order were supported by additional allegations including allegations that Carter wrote several letters threatening contempt if Tsephanyah Hawkins did not perform certain labor and services more quickly. Ultimately, she wrote, submitted, argued for, and obtained a temporary injunction with no expiration date compelling Tsephanyah Hawkins individually to sign any contracts and perform any work deemed necessary by the receiver. Judge Weeks signed all the orders, the first one ex parte without any notice to, hearing for, or presence of Tsephanyah Hawkins. He also signed the temporary injunction over objections by counsel that the order plainly ordered Tsephanyah Hawkins to work against his will, thus unlawfully enslaving him. To that objection, the judge simply stated "the order is signed."

To prevent Tsephanyah Hawkins from going to jail, both Tsephanyah Hawkins and his brother Yahchanan Hawkins labored producing

computerized court reporting systems and performing other tasks pursuant to the court orders.

The allegations against Carter are not merely conclusory allegations or conclusions of law couched as fact. Indeed, the allegations would pass heightened pleading requirements. Plaintiffs provided great detail into the language of the court orders, the timing of every act associated with those orders, and the facts from which a meeting of the minds can readily be deduced. Under such circumstances, it is in the very least *plausible* that the court orders were the result of an agreement, indeed they are an agreement, between Carter and Judge Weeks that Tsephanyah Hawkins should be ordered to perform labor or services against his will, while at the same time having virtually all of his property rights summarily removed.

The enslaving orders are plausible reason to believe that Carter and Judge Weeks agreed that Tsephanyah Hawkins individually should be ordered to perform labor or services against his will. Indeed, with those court orders, they together forced Tsephanyah Hawkins to labor against his will. By the Fifth Circuit's decision, the attorney who wrote and requested the enslaving orders is not acting under color of state authority. That position is incorrect.

4. The Court should grant certiorari because the panel below finds that no claim exists when out of state persons conspire with in-state individuals to enslave other in-state individuals by means of civil court order. For

such wrongful actions, consistent with this Court's previous findings, there should be no fiduciary shield. This Court's supervision is needed.

Despite plausible allegations that defendants were involved in a conspiracy to obtain or provide the services or labor of Tsephanyah Hawkins by means of abuse or threatened abuse of the law or the legal process, the panel below found that personal jurisdiction could not be exercised over defendants Gardner, Chistolini, and Chistolini and DeSimone, Inc. because of fiduciary shield. That is in direct opposition to this Court's previous findings on fiduciary shield. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-474 (1985).

Because the Fifth Circuit fails to recognize that forcing labor by means of a civil court order is a wrongful act, it can't properly reach the issue of whether individuals plausibly accused of conspiring to enslave by means of court order are entitled to fiduciary shield. This case presents the proper set of facts for this Court to determine those issues.

5. The Court should grant certiorari because, by the decision below, the Fifth Circuit has allowed district courts to, without cause, ban pro se litigants from filing via Electronic Case File while allowing attorneys to file using the system. Such unequal access to the courts invariably leads to a systemic cumulative diminution of the pro se litigant's time to the degree that it can affect the outcome of litigation, as it has in this case.

The complexity of the case, it had over seventeen defendants and twenty claims, combined with the disadvantage facing pro se plaintiffs because they were barred from filing with the district court via electronic case file, created a genuine and significant time disadvantage, and disadvantages of other sorts that, indeed, cost Plaintiffs the case. This Court's corrective supervision is needed to avoid further, irreparable harm.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:

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Appearing Pro Se

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APPENDIX A – OPINION OF THE FIFTH CIRCUIT COURT OF APPEALS FILED July 30, 2007

Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06-10544

Summary Calendar

TSEPHANYAH HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

THE HONORABLE JOHN W WEEKS; VICTORIA L. CARTER; MARILYN GARDNER; JOHN A CHISTOLINI; S A W SOLUTIONS, INC; SOUTH CAROLINA SCHOOL OF COURT REPORTING INC; CHISTOLINI AND DESIMONE INC

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas 1:05-CV-184

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:* For the reasons stated by the district court below, we AFFIRM

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in the 5th Cir. R. 47.5.4.

APPENDIX B – OPINION OF THE FIFTH CIRCUIT COURT OF APPEALS FILED July 30, 2007

Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06-10783

Summary Calendar

TSEPHANYAH HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

THE NATIONAL INSTITUTE OF REALTIME REPORTERS INC

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas 1:05-CV-184

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:* For the reasons stated by the district court below, we AFFIRM

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in the 5th Cir. R. 47.5.4.

APPENDIX C – OPINION OF THE FIFTH CIRCUIT COURT OF APPEALS FILED July 30, 2007

Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06-10980

Summary Calendar

TSEPHANYAH HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

CHARLES C SELF III: DONALD L ANDERSON JR; WHITTEN AND YOUNG PC

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas 1:05-CV-184

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:* For the reasons stated by the district court below, we AFFIRM

---

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in the 5th Cir. R. 47.5.4.

APPENDIX D – DECISION OF THE DISTRICT COURT FILED JANUARY 20, 2006

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

TSEPHANYAH Y. HAWKINS and
YAHCHANAN Y. HAWKINS,

Plaintiffs,

v.

THE HONORABLE JOHN W. WEEKS,
Et al.,

Defendants.

Civil Action No. 1:05-CV-184-C
ECF

ORDER

CAME ON FOR CONSIDERATION this day the following motions filed by Defendants and Plaintiffs:

(1) Defendant The Honorable John W. Weeks' Motion to Dismiss, originally filed on November 1, 2005 [#17], and amended on November 8, 2005

[#24]. Also before this Court is the Plaintiffs' Response, filed on December 7, 2005.[1]

(2) Defendants Gardner, Chistolini, and Chistolini & DeSimone P.C.'s Motion to Dismiss, filed on October 31, 2005 [#14]. Also before this Court is the Plaintiffs' Response, filed on December 7, 2005.[2]

(3) Defendant Carter's Motion to Dismiss, filed on October 31, 2005 [#11]. Also before this Court is the Plaintiffs' Response, filed on December 7, 2005.

(4) Defendant South Carolina School of Court Reporting's Motion to Dismiss, filed on November 9, 2005 [#26]. Also before this Court is the Plaintiffs' Response, filed on December 7, 2005.

(5) Defendant S.A.W. Solutions, Inc.'s Motion to Dismiss, filed on December 2, 2005 [#44]. Also before this Court is Plaintiffs' Response, filed on December 22, 2005.

(6) Plaintiffs' Motions to Conduct Limited Jurisdictional Discovery to Support Plaintiffs' Opposition to (a) Defendant S.A.W. Solutions, Inc.'s

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[1] Defendant Week's Reply was not considered. Defendants' Motion for Leave to File a Reply to Plaintiffs' Response [#92] and Plaintiffs' Motion for Simultaneous Leave for Defendant to File His Reply and for Leave for Plaintiffs to Surreply to That Reply or That Defendant Weeks' Reply Be Stricken [#86] are denied.

[2] Defendants' Reply was not considered. Plaintiffs' motion for Leave to Surreply to or to Strike the Reply [#84] is denied.

Motion to Dismiss, filed on December 22, 2005 [#79], (b) Defendant South Carolina School of Court Reporting's Motion to Dismiss, filed on December 7, 2005 [#60], and (c) Defendants Gardner, Chistolini, and Chistolini & DeSimone, P.C.'s Motion to Dismiss, filed on December 7, 2005 [#51].

(7) Plaintiffs' Requests for Entry of Default Judgment against Defendants (a) Oster [#90], (b) Stenoscribe [#91], (c) Vocedit [#88], and (d) Hutchison [#89], filed on December 23, 3005. Also before this Court is Defendants' Response, filed on January 17, 2006.[3]

(8) Plaintiffs' Motion for Leave to file a Second Amended Complaint, filed on December 7, 2005 [#46].

DISCUSSION

Defendant The Honorable John W. Weeks' Motion to Dismiss

Plaintiffs' suit against Defendant The Honorable John W. Weeks (herein "Judge Weeks") stems from a state lawsuit regarding a business dispute. In the state lawsuit, Plaintiffs are defending themselves against business claims brought by their cousin, Claudia Hutchison, regarding a computerized court reporting system. The style of the state lawsuit is *Claudia Hutchison v. Stenoscribe, Inc. & Tsephanyah*

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[3] Defendants' Motion to Deny Entry of Default or to Set Aside or Vacate Default [#94] is denied.

Hawkins, Individually, Cause No. 18093, in the 42nd Judicial District Court, Callahan County, Texas. (*See* Def.'s Br., p. 2.) Plaintiffs' claims against Judge Weeks stem from the issuance of a Temporary Restraining Order, an Order to Continue Temporary Restraining Order, and a Temporary Injunction and Order Appointing Receiver. (*See* Pls.' First Am. Compl., ¶¶ 44, 84, 97, 149.)

Plaintiffs filed suit under 42 U.S.C. § 1983, claiming that Judge Weeks violated their civil rights by actions he took under color of state law, and thereby deprived them of rights, privileges, or immunities guaranteed by the Constitution or the laws of the United States. (*See* Pls.' First Am. Compl., ¶¶ 1-436.) Plaintiffs also claim that the other named Defendants conspired with Judge Weeks to violate Plaintiffs' rights. Specifically, Plaintiffs filed suit against Defendants alleging violations of 42 U.S.C. § 1983, deprivation of liberty without due process, deprivation of the Thirteenth Amendment right to be free from enslavement, deprivation of freedom of expression, deprivation of privacy, deprivation of property without due process, forced labor, conspiracy to deprive rights, and neglect to prevent conspiracy. (*See* Pls.' First Am. Compl., ¶¶ 1-436.)

Judges enjoy judicial immunity from liability for judicial acts. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). Judicial immunity is an immunity from suit and not just from the ultimate assessment of damages. *Ballard v. Wall*, 413 F.3d 510, 515 (5th Cir. 2005). Judicial immunity can be overcome in

two ways: 1) nonjudicial actions, i.e., actions not taken in the judge's judicial capacity; and 2) judicial actions taken in the complete absence of jurisdiction. Id. (citing *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)).

In this case, Plaintiffs' various causes of action against Judge Weeks are connected with his handling of the state lawsuit over which he presided.[4] In that case, Judge Weeks acted within the scope of his judicial capacity. See *Ballard*, 413 F.3d at 515. Plaintiffs complain that Judge Weeks violated their rights by signing various orders in the state lawsuit. (See Pls.' First Am. Compl., ¶¶ 44, 84, 97, 149.) This Court concludes that those actions are normal judicial functions. The orders were related to controversies in the state lawsuit. Judge Weeks acted within his judicial capacity to decide whether to sign and issue the orders. Although Plaintiffs assert that Judge Weeks acted with a clear absence of all jurisdiction, Judge Weeks had jurisdiction over the parties and their claims to sign orders directly related to the pending business dispute. Since Judge Weeks has judicial immunity from suit and damages, this Court is of the opinion that Plaintiffs have failed to state any claim against Judge Weeks upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6); *Ballard*, 413 F.3d at 515.

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[4] (See Pls.' First Amen. Compl., ¶ 10.)

Appendix D

Defendants Gardner, Chistolini, and Chistolini & DeSimone, P.C.'s Motion to Dismiss

Defendants Marilyn Gardner, John Chistolini, and Chistolini & DeSimone, P.C. move to dismiss Plaintiffs' claims against them for lack of personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). Defendant Gardner formed a corporation called New England School of Court Reporting (herein "NESCR") in September of 2002, which is located in Massachusetts. (Def.'s Br., p. 1.)[5] Defendant Chistolini, a partner at Chistolini & DeSimone, P.C., is a practicing attorney in Massachusetts and serves as NIRRI's corporate attorney in Massachusetts. (Def.'s Br., p. 1.) Defendant, Chistolini & DeSimone, P.C., is a Massachusetts Professional Corporation, and its principal place of business is located at 21 McGarth Highway, Suite 201, Quincy, Massachusetts. (Def.'s Br., p. 1.) Defendants argue that Plaintiffs claims should be dismissed because this Court lacks personal jurisdiction over Gardner, Chistolini, and Chistolini & DeSimone, P.C.

When a non-resident defendant files a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that personal jurisdiction exists. *Wilson v. Belin*, 20 F.3d

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[5] In June of 2005, NESCR's name was changed to the National Institute of Realtime Reporters, Inc. (herein "NIRRI"). Defendant Gardner was the president of NESCR and is the current president of NIRRI.

644, 648 (5th Cir. 1994). The plaintiff must present prima facie evidence of personal jurisdiction. *WNS, Inc. v. Farrow*, 884 F.2d 200, 203 (5th Cir. 1989). Any allegations in the plaintiff's complaint will be taken as true except to the extent that they are contradicted by defendant's affidavits. *White v. Caplin*, 686 F.2d 276, 282-83 n.13 (5th Cir. 1982). Any conflicts between the facts established by the parties' affidavits and any other evidence are resolved in favor of the plaintiff for the purpose of determining whether a prima facie case exists. *Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990).

In a diversity action, personal jurisdiction over a nonresident may be exercised if (1) the nonresident defendant is amenable to service of process under the law of the forum state, and (2) the exercise of jurisdiction under state law comports with the due process clause of the Fourteenth Amendment. *Stuart v. Spademan*, 772 F.2d 1185, 1189 (5th Cir. 1985); *Dynamo v. Warehouse of Vending & Games*, 168 F. Supp. 2d 616, 620 (N.D. Tex. 2001). Since the Texas Long Arm Statute has been extended to the limits of due process, the only inquiry of the Court is whether the exercise of personal jurisdiction over Defendants Gardner, Chistolini, and Chistolini & DeSimone, P.C. would be constitutionally permissible. See id.

In order for due process to be satisfied, the nonresident defendant's acts and transactions must constitute such purposeful "minimum contacts" within the forum state that any exercise of personal

jurisdiction over defendant would not offend traditional notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *Dynamo*, 168 F. Supp. 2d at 620. "The minimum contacts prong of the due process requirement can be satisfied by a finding of either 'specific' or 'general' jurisdiction over the nonresident defendant." *Dynamo*, 168 F. Supp. 2d at 620 (citing Bullion v. Gillespie, 895 F.2d at 216).

Specific personal jurisdiction exists when the nonresident defendant purposefully does some act or transaction in the forum state, and the cause of action in the suit must arise or be connected with this act or transaction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985); *Dynamo*, 168 F. Supp. 2d at 620. General jurisdiction exists when the nonresident defendant's contacts with the forum state are continuous and systematic enough to support the reasonable exercise of personal jurisdiction. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984); *Dynamo*, 168 F. Supp. 2d at 620.

However, the "minimum contacts" test for determining personal jurisdiction becomes irrelevant if the actions of a defendant are conducted as an agent or as a corporate officer. *Dynamo*, 168 F. Supp. 2d at 620. The fiduciary-shield doctrine provides that acts by an individual within a state solely in his or her capacity as a corporate officer do not create personal jurisdiction over that individual based upon those acts done solely in the capacity as a corporate officer even if

the state has personal jurisdiction over the corporation. *Stuart v. Spademan*, 772 F.2d at 1197.

Here, personal jurisdiction cannot be exercised over Defendant Gardner in her capacity as President of NIRRI. The actions for which she is allegedly liable were conducted in her capacity as President of NESCR/NIRRI. (See Pls.' First Am. Compl., ¶¶ 1-436.) Therefore, personal jurisdiction cannot be exercised over Defendant Gardner in her capacity as a corporate officer because of the fiduciary-shield doctrine. See generally *Stuart*, 772 F.2d at 1197; *Dynamo*, 168 F. Supp. 2d at 621. Furthermore, Plaintiff has not adequately alleged that Defendant Gardner, in her individual capacity, has had minimum contacts with the state of Texas. In this case, Defendant Gardner only acted in her capacity as President of NESCR/NIRRI in acts and transactions connected to or arising out of any of the causes of action that Plaintiffs have alleged in their First Amended Complaint. (See Pls.' First Am. Compl., ¶¶ 1-436.) Therefore, specific jurisdiction does not exist against Defendant Gardner, individually. Additionally, general personal jurisdiction cannot be exercised against Defendant Gardner, in her individual capacity, because she has had no purposeful, continuous, and systemic contacts with the forum state or conducted any substantial activities within the forum state as an individual. Defendant Gardner resides in Massachusetts and there is no allegation that she has contact with the state of Texas. Thus, general

jurisdiction cannot be exercised over Defendant Gardner in her individual capacity.

Personal jurisdiction cannot be exercised over Defendant Chistolini because Defendant Chistolini is an agent of NESCR/NIRRI and is protected under the fiduciary-shield doctrine as well. The attorney-client relationship is an agency relationship where an attorney is the agent of his client. See *Gavenda v. Strata Energy*, 705 S.W.2d 690, 693 (Tex. 1986). In this case, Defendant Chistolini was the attorney for NESCR in NESCR's dealing with Plaintiffs regarding NESCR's oral contract with StenoScribe, Inc. Defendant Chistolini was clearly the agent of NESCR and thus his actions as an attorney and agent of NESCR do not subject him to the exercise of personal jurisdiction. See *Dynamo*, 168 F. Supp. 2d at 620; Stuart, 772 F.2d at 1197. Personal jurisdiction cannot be exercised over Defendant Chistolini in his individual capacity because there is no allegation that he acted in his individual capacity to create minimum contacts with the forum state. Specific personal jurisdiction cannot be exercised in this case because all of Defendant Chistolini's actions regarding the oral contract between NESCR and StenoScribe, Inc. occurred in his capacity as an attorney for NESCR and not in his individual capacity. Additionally, there is no allegation that Defendant Chistolini has ever had any systematic, continuous, or substantial activities within the forum state that would create general personal jurisdiction over Defendant Chistolini. See generally *Helicopteros*, 466 U.S. at 416. Defendant

Chistolini is a resident of Massachusetts and has no contact with the state of Texas in any individual capacity. (Def.'s Br., p. 16.) Consequently, personal jurisdiction cannot be exercised over Defendant Chistolini in this action.

Finally, personal jurisdiction cannot be exercised over Defendant Chistolini & DeSimone, P.C. because Defendant Chistolini & DeSimone, P.C. was acting as an agent of Defendant NIRRI. (See Def.'s Br., App. Ex. B, John Chistolini Aff.) Defendant Chistolini & DeSimone, P.C. had a client, NIRRI, that was a resident of Massachusetts; John Chistolini, on behalf of the law firm Chistolini & DeSimone, P.C., never visited Texas regarding the transactions which are the basis of this cause of action; and John Chistolini never made an appearance in a Texas court. Therefore, specific personal jurisdiction cannot be exercised over Defendant Chistolini & DeSimone, P.C. Additionally, the fiduciary-shield doctrine applies to Defendant Chistolini & DeSimone, P.C. since all of the transactions or acts conducted by Defendant Chistolini & DeSimone, P.C. were done as the agent of NESCR.

General personal jurisdiction cannot be exercised over Defendant Chistolini & DeSimone, P.C. Defendant Chistolini & DeSimone, P.C. is a Massachusetts professional corporation whose principal place of business is located in Quincy, Massachusetts, and Defendant has no offices, employees, or servants in Texas. Defendant has never actively done business in the state of Texas,

does not represent clients in the state of Texas, and does not maintain a place of business in Texas. Thus, Defendant Chistolini & DeSimone, P.C. has absolutely no purposeful contacts with the state of Texas. See *Helicopteros*, 466 U.S. at 416.

Having considered the various arguments and authorities, and for the reasons cited in Defendants' brief, this Court is of the opinion that Defendants' motion to dismiss should granted and that Plaintiffs' claims against Defendants Gardner, Chistolini, and Chistolini & DeSimone, P.C. should be dismissed for lack of personal jurisdiction.

Defendant Carter's Motion to Dismiss

Defendant Victoria Carter, an attorney with the Carter Law Offices, represented Defendant Claudia Hutchison in a lawsuit against Tsephanyah Hawkins, one of the plaintiffs in this action. While acting in that capacity, Carter filed three ex parte temporary restraining orders against Tsephanyah Hawkins in 2003. Plaintiffs have brought suit against Defendant Carter for (1) forcing plaintiffs into labor in violation of 18 U.S.C. § 1595; (2) deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy under 28 U.S.C. § 1343; (3) conspiracy under § 1985 of Title 42; (4) violation of the Racketeer Influenced and Corrupt Organizations (herein "RICO") statute, 18 U.S.C. § 1961; (5) deprivation of the Thirteenth Amendment right to be free from enslavement; (6) deprivation of freedom of expression; (7) deprivation of privacy; (8) deprivation of property without due process; and (9)

the return of monies had and allegedly received by Carter. (See Pls.' First Am. Compl., ¶¶ 1- 436.)

Defendant Carter contends that the Plaintiffs' claims should be dismissed against her because Plaintiffs have failed to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). This Court has authority to dismiss a suit for failure to state a claim if the complaint clearly demonstrates that Plaintiffs cannot prove any set of facts that would entitle them to relief. *Doe v. Hillsboro* ISD, 81 F.3d 1395, 1401-02 (5th Cir. 1996). First, Plaintiffs attempt to state a cause of action for forced labor in violation of 18 U.S.C. § 1595. 18 U.S.C. § 1595 states in pertinent part:

> An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

18 U.S.C. § 1595. Furthermore, under § 1589:

> Whoever knowingly provides or obtains the labor or services of a person–(1) by threats of serious harm to, or physical restraint against, that person or another person;
> (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

> (3) by means of the abuse or threatened abuse of law or the legal process,

can be held civilly liable. See 18 U.S.C. § 1589. However, because Plaintiffs have not alleged facts sufficient to establish each and every element under 18 U.S.C. § 1595, this Court is of the opinion that Plaintiffs' cause of action should be dismissed. (See Pls.' First Am. Compl., ¶¶ 1-436.) Second, Plaintiffs allege causes of action for conspiracy, deprivation of property without due process, deprivation of freedom of expression, and deprivation of privacy due to Defendant Carter's preparation of an ex parte temporary restraining order. (See Pls.' First Am. Compl., ¶¶ 1-436.) However, Plaintiffs did not allege that there was a specific intent to accomplish an unlawful act. Because there can be no conspiracy where the acts complained of, and the means employed in doing the acts, are lawful, Plaintiffs' causes of action against Defendant Carter relating to the ex parte temporary restraining order do not state a cause of action for conspiracy. Next, Plaintiffs allege a cause of action for conspiracy under 42 U.S.C. § 1985. Since Plaintiffs have failed to state with particularity the factual allegations necessary to support a cause of action under 42 U.S.C. § 1985, and instead have offered broad and conclusory statements in their complaint against Defendant Carter, this Court concludes that Plaintiffs have failed to state a claim under 42 U.S.C. § 1985. Plaintiffs also allege a cause of action for violation of RICO. See 18 U.S.C. § 1961. Because

the Plaintiffs have again failed to allege all the factual allegations necessary to establish a RICO violation, this Court is of the opinion that the Plaintiffs' claims under 18 U.S.C. § 1961 should be dismissed.

Next, Plaintiffs allege a cause of action for violating the Thirteenth Amendment. Plaintiffs have completely failed to allege necessary facts to establish a claim for unlawful servitude under the Thirteenth Amendment. Finally, Plaintiffs allege a cause of action for the alleged escrow scheme committed by Defendant Carter. The Plaintiffs have failed to allege that there was an intent to accomplish an unlawful act or that there was the necessary meeting of the minds. Thus, Plaintiffs cannot establish the elements necessary to state a claim for the alleged escrow scheme.

Having considered the various arguments and authorities, and for the reasons cited in Defendant Carter's brief, this Court is of the opinion that all of Plaintiffs' claims against Defendant Carter, as well as Defendant Carter Law Offices, should be dismissed for failure to state claims upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).

Defendant South Carolina School of Court Reporting's Motion to Dismiss

Defendant South Carolina School of Court Reporting claims that this Court lacks personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). In order for this Court to exercise personal jurisdiction over the Defendant, Plaintiffs must plead and prove that Defendant, a non-resident defendant, maintained

purposeful minimum contacts with the state of Texas. See *Int'l Shoe Co.*, 326 U.S. at 316; *Dynamo*, 168 F. Supp. 2d at 620. Here, Defendant was incorporated in the state of South Carolina after August 31, 2004. (See Def.'s Br., p. 3.) Because there is no evidence and no allegation that Defendant has had even minimum contact with the state of Texas, this Court is of the opinion that personal jurisdiction does not exist over this Defendant. See *Wilson v. Belin*,20 F.3d at 648; Fed. R. Civ. P. 12(b)(2).

Defendant S.A.W. Solutions, Inc.'s Motion to Dismiss

Defendant S.A.W. Solutions, Inc. (herein "Solutions") claims that this Court lacks personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). Again, in order for this Court to exercise personal jurisdiction over Defendant Solutions, Plaintiffs must plead and prove that Defendant, a non-resident defendant, maintained purposeful minimum contacts with the state of Texas. See *Int'l Shoe Co.*, 326 U.S. at 316; *Dynamo*, 168 F. Supp. 2d at 620. In this case, Defendant S.A.W. Solutions, Inc. was incorporated in the state of Pennsylvania and only maintained offices in Pennsylvania. (See Def.'s Br., Thomas Foley Aff., App. A, ¶ 2.) Defendant never maintained an office in Texas, did not do business in Texas, did not have any employees or agents in Texas, and did not market any products or services in Texas. (See Def.'s Br., Thomas Foley Aff., App. A., 3.) Because Plaintiffs have not adequately pleaded facts alleging that Defendant Solutions had

contacts with the state of Texas, this Court is of the opinion that Defendant's Motion to Dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) should be granted. See Fed. R. Civ. P. 12(b)(2).

Plaintiffs' Motions to Conduct Limited Jurisdictional Discovery

Plaintiffs request leave to conduct limited jurisdictional discovery to support their opposition to Defendants Marilyn Gardner, John Chistolini, Chistolini & DeSimone, P.C., South Carolina School of Court Reporting, Inc., and S.A.W. Solutions, Inc.'s Motions to Dismiss. "At a minimum, a plaintiff must establish a colorable or prima facie showing of personal jurisdiction before discovery should be permitted." *Encompass Ind./Mech. of Tex., Inc. v. GTEC S.A.*, 2003WL 124483, at *2 (N.D. Tex. Jan. 10, 2003). Here, Plaintiffs have neither established a prima facie showing of personal jurisdiction nor have they brought forth competent evidence to demonstrate that further discovery would bear fruit with any of the Defendants named above. Accordingly, Plaintiffs should not be permitted to conduct a jurisdictional fishing expedition, and thus Plaintiffs' motions for limited jurisdictional discovery should be denied.

Plaintiffs' Request for Entry of Default Judgment

Finally, Plaintiffs request entry of default judgment against Defendants Norman Oster, Claudia

Hutchison, Vocedit, Inc., and Stenoscribe, Inc. because they failed to answer or otherwise respond to Plaintiffs' First Amended Complaint within the required time limits. (See Pls.' Requests for Default J., p. 2.) Default judgments are generally disfavored in the law, and thus should not be granted on a claim simply because the defendant failed to meet a procedural time requirement. *Mason & Hanger – Silas Mason Co. v. Metal Trades Council*, 726 F.2d 166, 168 (5th Cir. 1984). Plaintiffs are "not entitled to a default judgment as a matter of right, even where the defendant is technically in default." *Lewis v. Lynn*, 236 F.3d 766, 767 (5th Cir. 2001). Furthermore, the court may consider if, and how quickly, the defendant acted to correct a default. *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000). Here, the answer filed by Defendants was only one day late.[6] The Defendants filed their Answer to the First Amended Complaint as soon as they learned that Plaintiffs' Second Amended Complaint had not been filed with the Court. (See Def.'s Br., p. 5.) Therefore, good cause exists for refusing to enter default judgments as to Defendants Hutchison, Stenoscribe, Oster, and Vocedit.

Plaintiffs' Motion for Leave to File a Second Amended Complaint

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[6] Defendants' Answer to Plaintiffs' First Amended Complaint, which was served on November 25, 2005, was due on December 15, 2005. Defendants filed their Answer to Plaintiffs' First Amended Complaint on December 16, 2005.

On December 7, 2005, Plaintiffs filed a Motion for Leave to File a Second Amended Complaint. Because leave to amend pleadings should be granted freely under Federal Rule of Civil Procedure 15(a), this Court is of the opinion that Plaintiffs' motion should be granted. However, after reviewing the Plaintiffs' Second Amended Complaint, the Court concludes that the Plaintiffs' amendments will not change this Court's decision to grant the various Defendants' Motions to Dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) or failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Consequently, before Plaintiffs' Second Amended Complaint will be filed, Plaintiffs must remove all claims against the following Defendants from their Second Amended Complaint: (1) Defendant The Honorable John W. Weeks, (2) Marilyn Gardner, (3) John A. Chistolini, (4) Chistolini & DeSimone, P.C., (5) Victoria L. Carter, (6) Carter Law Offices, (7) The South Carolina School of Court Reporting, Inc., and (8) S.A.W. Solutions, Inc.

CONCLUSION

The Court, based on the reasoning stated herein, hereby ORDERS that

(1) Defendant THE HONORABLE JOHN W. WEEKS' Amended Motion to Dismiss is **GRANTED**. Additionally, Defendant's Motion for Leave to File a Reply to Plaintiffs' Response and Plaintiffs' Motion for Simultaneous Leave for Defendant to File His Reply and for Leave for

Plaintiffs to Surreply to That Reply or That Defendant Weeks' Reply Be Stricken are **DENIED**.
(2) Defendants MARILYN GARDNER, JOHN A. CHISTOLINI, and CHISTOLINI AND DESIMONE, P.C.'s Motion to Dismiss is **GRANTED**. Additionally, Plaintiffs' Motion for Leave to Surreply to or to Strike the Reply is **DENIED**.
(3) Defendants VICTORIA L. CARTER and CARTER LAW OFFICES' Motion to Dismiss is **GRANTED**.
(4) Defendant THE SOUTH CAROLINA SCHOOL OF COURT REPORTING, INC.'s Motion to Dismiss is **GRANTED**.
(5) Defendant S.A.W. SOLUTIONS, INC.'s Motion to Dismiss is **GRANTED**.
(6) Plaintiffs' Motions to Conduct Limited Jurisdictional Discovery are **DENIED**.
(7) Plaintiffs' Requests for Entry of Default Judgment against Defendants CLAUDIA M. HUTCHISON, NORMAN M. OSTER, STENOSCRIBE, INC.,and VOCEDIT, INC. are **DENIED**. Additionally, Defendants' Motion to Deny Entry of Default or to Set Aside or Vacate Default is **DENIED**.
(8) Plaintiffs' Motion for Leave to File a Second Amended Complaint is **GRANTED** only to the extent that the Clerk of the Court is directed not to file Plaintiffs' Second Amended Complaint until all claims against the following Defendants are removed: THE HONORABLE JOHN W. WEEKS, MARILYN GARDNER, JOHN A. CHISTOLINI,

Appendix D

CHISTOLINI AND DESIMONE, P.C., VICTORIA L. CARTER, CARTER LAW OFFICES, THE SOUTH CAROLINA SCHOOL OF COURT REPORTING, INC., and S.A.W. SOLUTIONS, INC. Plaintiffs shall have until 9:00 a.m. on January 26, 2006, to conform their Second Amended Complaint to this order and file same with the Clerk.

(9) Any relief not granted herein is **DENIED**. SO ORDERED this 20th day of January, 2006.

s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

APPENDIX E – DECISION OF THE DISTRICT COURT FILED JUNE 16, 2006

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

TSEPHANYAH Y. HAWKINS and
YAHCHANAN Y. HAWKINS,

Plaintiffs,

v.

CLAUDIA M. HUTCHISON, Et al.,

Defendants.

Civil Action No. 1:05-CV-184-C
ECF

ORDER

CAME ON FOR CONSIDERATION this day Defendant The National Institute of Realtime Reporters, Inc.'s Motion for Summary Judgment, filed on March 29, 2006. Also before this Court is the Plaintiff's Response, filed on April 24, 2006. Having considered the arguments and authorities, this Court is of the opinion that the motion should be granted.

I.

Appendix E

FACTUAL & PROCEDURAL BACKGROUND

In September 2002, Marilyn Gardner formed a corporation called New England School of Court Reporting (herein "NESCR"), located in Massachusetts. In June 2005, NESCR's name was changed to The National Institute of Realtime Reporters, Inc. (herein "NIRRI"). Gardner served as president of NESCR and currently serves as president of NIRRI. In August 2003, Gardner met Claudia Hutchison. Hutchison represented to Gardner that she was an agent of a company named StenoScribe, Inc., which sold voice recognition software and related software used in laptop computers of court reporters. NESCR verbally agreed to purchase the software and peripherals for itself and its students. This oral agreement was reached in August 2003, between NESCR and Stenoscribe, Inc. (Def.'s App., p. 2.) There were no other parties to the contract. According to the terms, StenoScribe was to provide unlimited technical support for the software and to provide technicians to install all of the new software at the NESCR facilities. NESCR was to pay, and did pay, the expenses of the installing technician, Norm Oster, sent by Stenoscribe. The price for each software package under the oral agreement was $3,500.00, which could be paid by the students through financing with Sallie Mae. On September 25, 2003, NESCR made its first payment to StenoScribe in the amount of $7,000.00. NESCR made subsequent payments of $7,000.00 and

$3,500.00 into an escrow account pending the outcome of a separate suit in state court between the Plaintiffs and several co-defendants in this suit. Gardner's first encounter with Plaintiff Tsephanyah Hawkins allegedly occurred in October 2003, when Hawkins called her and told her that he was an owner of StenoScribe. During this call, Plaintiff Tsephanyah Hawkins told Gardner that Defendant Hutchison was no longer employed by StenoScribe and that NESCR's checks had been lost. He apparently requested that new checks be issued and sent to a different address. On October 14, 2003, John Chistolini, NESCR's attorney in Massachusetts, received a copy of a restraining order, which was entered against Plaintiff Tsephanyah Hawkins and StenoScribe on October 10, 2003, in a lawsuit filed in the 42nd District Court of Callahan County, Texas (herein "Texas State Litigation"). NIRRI claims that receipt of the restraining order filed by Chistolini was the first notice to NESCR that there was any lawsuit involving Plaintiff Tsephanyah Hawkins, StenoScribe, or Defendant Hutchison. Furthermore, it is undisputed that NESCR was never a party to the suit. On October 7, 2005, Plaintiffs Tsephanyah Y. Hawkins and Yahchanan Y. Hawkins filed suit against Defendant NIRRI in this Court. On January 26, 2006, Plaintiffs filed their Second Amended Complaint against Defendant NIRRI. On March 29, 2006, Defendant NIRRI filed the present motion for summary judgment, seeking judgment as a matter of law as to all of Plaintiff's claims against

NIRRI. The Court will consider each of Plaintiffs' claims against Defendant NIRRI in turn.

II.

STANDARD

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," when viewed in the light most favorable to the non-moving party, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986) (internal quotations omitted). A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 248. In making its determination, the court must draw all justifiable inferences in favor of the non-moving party. Id. at 255. Once the moving party has initially shown "that there is an absence of evidence to support the nonmoving party's case," *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986), the non-movant must come forward, after adequate time for discovery, with significant probative evidence showing a triable issue of fact. Fed. R. Civ. P. 56(e); *State Farm Life Ins. Co. v. Gutterman*, 896 F.2d 116, 118 (5th Cir. 1990). Conclusory allegations and denials, speculation,

improbable inferences, unsubstantiated assertions, and legalistic argumentation are not adequate substitutes for specific facts showing that there is a genuine issue for trial. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428 (5th Cir. 1996) (en banc); SEC v. Recile, 10 F.3d 1093, 1097 (5th Cir. 1993). The nonmoving party must "go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Giles v. General Elec. Co.*, 245 F.3d 474, 493 (5th Cir. 2001) (quoting *Celotex*, 477 U.S. at 324). Absent a showing that there is a genuine issue for trial, a properly supported motion for summary judgment should be granted. See *Eversley v. MBank Dallas*, 843 F.2d 172, 173-74 (5th Cir. 1988); Resolution Trust *Corp. v. Starkey*, 41 F.3d 1018, 1022-23 (5th Cir. 1995). Furthermore, "summary judgment is appropriate where the only issue before the court is a pure question of law." *Sheline v. Dun & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991); see also Neff v. Am. Dairy Queen Corp., 58 F.3d 1063, 1065 (5th Cir. 1995) ("Consequently, we hold that because the disputed issue in this case is purely legal, it was appropriately resolved through summary judgment.").

III.
DISCUSSION

Unjust Enrichment Claim First, Plaintiffs allege a cause of action against Defendant NIRRI for

unjust enrichment. A party may recover under an unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of undue advantage. *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). Unjust enrichment is a cause of action based in quasi-contract and does not apply where the dispute is governed by an express contract. *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 683-84 (Tex. 2000). Here, there is no evidence that NESCR obtained money or property from Tsephanyah Hawkins. The only evidence before this Court on point indicates that NESCR purchased court reporting software systems from StenoScribe, Inc. under a purchase agreement and that NESCR has either paid the purchase price to StenoScribe or has paid the remaining purchase money in escrow to Victoria Carter or Chistolini & DeSimone, Inc. There is also evidence that the terms of payment under the oral contract between NESCR and StenoScribe, Inc. were clear and unambiguous. Consequently, Defendant NIRRI is entitled to summary judgment as to Plaintiffs' unjust enrichment claim. RICO Claim Next, Plaintiffs allege that Defendant NIRRI violated the Racketeer Influenced and Corrupt Organizations Act (herein "RICO"). Specifically, Plaintiffs allege that NIRRI violated 18 U.S.C. §§ 1962(a), (c), and (d). First, § 1962(a) states in pertinent part: It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an

unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . . 18 U.S.C. §§ 1962(a). In this case, there is no evidence that NIRRI invested any income or proceeds from any income derived from a racketeering activity to acquire an interest in or to establish or operate any enterprise. Consequently, as a matter of law, NIRRI is not liable under 18 U.S.C. § 1962(a). See Parker & Parsley Petroleum Co. v. Dresser Indus., 972 F.2d 580, 584 (5th Cir. 1992) (affirming dismissal of RICO claims for failure to plead investment of income from racketeering activity). Second, § 1962(c) states in pertinent part: It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.18 U.S.C. § 1962(c). In this case, there is no evidence that NIRRI participated in an enterprise through a pattern of racketeering or collection of an unlawful debt in violation of § 1962(c). Consequently, because there is no evidence of an enterprise and no evidence of a pattern of

racketeering that would implicate NIRRI, as a matter of law, NIRRI is not liable under 18 U.S.C. § 1962(c). See *Calcasieu Marine Nat'l Bank v. Grant*, 943 F.2d 1453, 1464 (5th Cir. 1991); *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122-23 (5th Cir. 1996). Third, § 1962(d) states in pertinent part: It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section. 18 U.S.C. § 1962(d). The core of a RICO civil conspiracy is an agreement to commit predicate acts, and therefore a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement. *Crowe v. Henry*, 43 F.3d 198, 206 (5th Cir. 1995). In this case, there is no evidence that NIRRI agreed to commit predicate acts. Therefore, NIRRI is entitled to summary judgment on Plaintiffs' conspiracy claim under 18 U.S.C. § 1962(d).Plaintiffs' Remaining Claims Finally, Defendant NIRRI is not liable for violations of 18 U.S.C. § 1589 or for violations of 42 U.S.C. § 1983. Additionally, Defendant NIRRI is not liable for violations of the First, Fourth, Fifth, Thirteenth, or Fourteenth Amendments to the United States Constitution. There is no evidence before this Court whatsoever that Defendant NIRRI was a party to the Texas State Litigation, participated in that lawsuit in any way or contributed to the restraining order that Plaintiffs assert compelled them into forced labor and involuntary servitude, allegedly violating Plaintiffs' constitutional rights. There is insufficient evidence to support Plaintiffs' claim that NIRRI

caused any of the violations and deprivations set forth in Plaintiffs' Second Amended Complaint. There is no evidence that NIRRI had knowledge of the restraining order until after the order was entered. Because there is no evidence that NIRRI caused or contributed to the offending court orders, there is no basis for finding NIRRI in violation of § 1589, § 1983, or the First, Fourth, Fifth, Thirteenth, and Fourteenth Amendments. Significantly, Plaintiffs have also failed to provide any evidence to create a genuine issue of material facts as to any of the elements of any of the claims set forth above. 18 U.S.C. § 1589; 42 U.S.C. § 1983; *Blackburn v. City of Marshall*, 42 F.3d 925, 930 (5th Cir. 1995); *Cobb v. Georgia Power Co.*, 757 F.2d 1248, 1251 (11th Cir. 1985); *Roberts v. Walmart Stores, Inc.* 736 F. Supp. 1527, 1528 (E.D. Mo. 1990); *Hudgens v. NLRB*, 424 U.S. 507, 513, 96 S.Ct. 1029 (1976). Consequently, Defendant NIRRI is entitled to summary judgment as to Plaintiffs' remaining claims.

V.
CONCLUSION

This Court, for the reasons stated herein, hereby ORDERS that Defendant The National Institute of Realtime Reporters, Inc.'s Motion for Summary Judgment is GRANTED.

DATED this 16th day of June, 2006.

s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

APPENDIX F – DECISION OF THE DISTRICT COURT FILED JULY 13, 2006

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

TSEPHANYAH Y. HAWKINS and
YAHCHANAN Y. HAWKINS,

Plaintiffs,

v.

CLAUDIA M. HUTCHISON, Et al.,

Defendants.

Civil Action No. 1:05-CV-184-C
ECF

ORDER

As is the case here, when a plaintiff fails to respond to a properly supported motion for summary judgment, the court has not been directed to admissible evidence creating a genuine issue of material fact. A summary judgment non-movant who does not respond to the motion is relegated to the unsworn pleadings, which do not constitute summary judgment evidence. See, e.g., Solo Serve Corp. v. Westowne Assocs., 929 F.2d 160, 165 (5th Cir. 1991). Plaintiffs, therefore, have not gone beyond the pleadings and designated

specific facts showing that there is a genuine issue for trial as to the components of their claims. See Celotex, 477 U.S. at 324. Here, Defendants' Motion is properly supported and no factual showing has been made in opposition. In their complaint, Plaintiffs claim that Defendants committed legal malpractice, violated 42 U.S.C. §§ 1985 and 1986, 18 U.S.C. § 1589, 42 U.S.C. § 1983 and committed constitutional rights violations, including deprivation of property without due process under the

Fifth Amendment, deprivation of liberty or property without due process under the Fourteenth Amendment, deprivation of privacy under the Fourth and Fifth Amendments, deprivation of the Thirteenth Amendment right to be free from enslavement, and deprivation of the First Amendment right of freedom of expression. Plaintiffs have submitted no evidence to this Court demonstrating any of the elements of any of the claims against Defendants. The Court refuses to search the record sua sponte for some genuine issue of material fact. Consequently, since there is no evidence before this Court of one or more essential elements of each of Plaintiffs' claims against Defendants, this Court is of the opinion that Defendants are entitled to summary judgment. See generally Celotex, 477 U.S. at 322; Jacks v. City of Ballinger, 2005 WL 2464564, at *1 (N.D. Tex. Oct. 5, 2005).

Appendix F

CONCLUSION

Having considered the papers filed and the various arguments and authorities, this Court is of the opinion that Defendants are entitled to judgment as a matter of law as to all of Plaintiffs' claims. The Court, based on the reasoning stated herein, hereby ORDERS that Defendants' Motion for Summary Judgment is GRANTED.
Dated this 13th day of July, 2006.

s/ Sam R. Cummings
SAM R. CUMMINGS
UNITED STATES DISTRICT COURT

APPENDIX G – FIFTH CIRCUIT COURT OF APPEALS DENIAL OF PETITION FOR REHEARING FILED AUG 29 2007

Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
U.S. COURT OF APPEALS

No. 06-10544

TSEPHANYAH Y HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

The Honorable JOHN W WEEKS; VICTORIA L CARTER; MARILYN GARDNER; JOHN A CHISTOLINI; S.A.W. SOLUTIONS INC; SOUTH CAROLINA SCHOOL OF COURT REPORTING, INC; CHISTOLINI AND DESIMONE, INC

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas, Abilene

ON PETITION FOR REHEARING EN BANC

(Opinion 7/30/07, 5 Cir., _____, _____ f.3d _____)

Appendix G

Before SMITH, WIENER and OWEN, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in the regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/ Priscilla A. Owen
United States Circuit Judge

REHG-6a

APPENDIX H – FIFTH CIRCUIT COURT OF APPEALS DENIAL OF PETITION FOR REHEARING FILED AUG 29 2007
Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT U.S. COURT OF APPEALS

No. 06-10783

TSEPHANYAH Y HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

THE NATIONAL INSTITUTE OF REALTIME REPORTERS, INC.

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas, Abilene

ON PETITION FOR REHEARING EN BANC

(Opinion 7/30/07, 5 Cir., _____, _____ f.3d _____)

Before SMITH, WIENER and OWEN, Circuit Judges.

PER CURIAM:

Appendix H

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in the regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/ Priscilla A. Owen
United States Circuit Judge

REHG-6a

APPENDIX I – FIFTH CIRCUIT COURT OF APPEALS DENIAL OF PETITION FOR REHEARING FILED AUG 30 2007
Charles R. Fulbruge III, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT U.S. COURT OF APPEALS

No. 06-10980

TSEPHANYAH Y HAWKINS; YAHCHANAN Y HAWKINS

Plaintiffs – Appellants

v.

CHARLES C SELF, III; DONALD ANDERSON, JR; WHITTEN AND YOUNG PC

Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas, Abilene

ON PETITION FOR REHEARING EN BANC

(Opinion 7/30/07, 5 Cir., _____, _____ f.3d _____)

Before SMITH, WIENER and OWEN, Circuit Judges. PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in the regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/ Priscilla A. Owen
United States Circuit Judge

REHG-6a

APPENDIX J – EX PARTE COURT ORDER ISSUED BY THE HONORABLE JOHN W. WEEKS FILED OCTOBER 10, 2003

IN THE DISTRICT COURT, 42ND JUDICIAL DISTRICT
CALLAHAN COUNTY, TEXAS

18,093

FILED FOR RECORD
AT 1:40 O'CLOCK P.M.

SHARON OWEN, DISTRICT CLERK, CALLAHAN COUNTY, TX

CLAUDIA HUTCHISON

VS.

STENOSCRIBE, INC. AND TSEPHANYAH HAWKINS, INDIVIDUALLY

TEMPORARY RESTRAINING ORDER AND ORDER SETTING HEARING

The application of Plaintiff for temporary restraining order was presented to the Court today. The Court examined the pleadings of Plaintiff and finds that Plaintiff is entitled to a temporary restraining order.

Appendix J

IT IS THEREFORE ORDERED that the clerk of this Court issue a restraining order restraining Defendant and Defendant is immec' `tely restrained from:

Temporary Restraining Order

Based upon the attached affidavits incorporated herein for all purposes, Plaintiff requests an immediate temporary restraining order against Tsephanyah Hawkins a/k/a Russell Owen, Jr. (HAWKINS), his agents of assigns from committing the following acts:

(1) interfering with the duties that the Plaintiff has been involved with performing for StenoScribe, Inc., which include, but are not limited to the following:

(a) providing emergency services for the court reporters in the courtroom
(b) answering phones for StenoScribe, Inc.
(c) providing technical support for StenoScribe, Inc. to the existing customers
(d) taking in the money for StenoScribe, Inc. and paying the regular bills
(e) marketing the product
(f) assisting the instructors across the country
(g) hiring and firing of employees

(2) altering or effecting any utilities of the commercial building or the Plaintiff's residence, including changing any phone numbers or routing

of phone numbers, and/or in the event that Hawkins has already rerouted the phone numbers, changed the phone numbers, or disrupted the status quo of the phone service, to reinstate that phone service;
(3) removing the name of Plaintiff from any corporate checking account, or in the event if Hawkins has already removed Plaintiff's name, to take care of putting her name back on the account(s);
(4) restricting Plaintiff from access to the building where she has been operating the business entity or any necessary personnel;
(5) destroying or changing ownership of computer files, records, any corporation property, Hawkins personal property, Plaintiff's personal property;
(6) interfering with ongoing customer relations between the customers and Plaintiff;
(7) performing any act which has a negative impact on the corporation, including any use of corporation equipment, supplies, services, or funds for personal use;
(8) not fulfilling current obligations or commitments to customers, specifically, but not limited to the New England School of Court Reporting;
(9) not providing software upon request by Plaintiff or in conjunction with any current orders;
(10) hiding or secreting property from the Plaintiff;
(11) making any verbal or physical threats to Plaintiff or her family;
(12) slandering or libeling the Plaintiff in any manner;

(13) entering on Plaintiff's property.
(14) Communicating with the Plaintiff in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner;
(15) Threatening the Plaintiff in person, by telephone, or in writing to take unlawful action against any person;
(16) Placing one or more telephone calls, anonymously, at any reasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication;
(17) Causing bodily injury to the other party or to a family member;
(18) Threatening the Plaintiff, their family, their agents, or assigns with imminent bodily injury;
(19) Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties;
(20) Falsifying any writing or record relating to the property of either party;
(21) Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties;
(22) Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value;
(23) Tampering with the tangible property of one or both of the parties, including any document that

represents or embodies anything of value, and causing pecuniary loss to the other party;
(24) Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personalty or realty, except as specifically authorized by order of this Court;
(25) Making withdrawals from any checking or savings account in any financial institution for any purpose, until the hearing on the restraining order, unless necessary for utilities or taxes;
(26) Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at 3372 PVT 2559, Clyde, Texas or 3350 PVT 2559, Clyde, TX 79510, or in any manner attempting to withdraw any deposits for service in connection with those services;
(27) Opening or diverting mail addressed to the other party (including the Corporation);
(28) Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any instrument payable to the other party without the personal signature of the other party;
(29) Charging on the American Express credit card belonging to the Plaintiff;
(30) Discontinuing or reducing the withholding for federal income taxes on the other party's wages or salary while this case is pending;

(31) Destroying, disposing of, o altering any financial records of the parties, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements ; and
(32) Molesting or disturbing the Plaintiff's peace.

This restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. This order shall be binding on Defendant, Defendant's agents, servants, and employees; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.

IT IS FURTHER ORDERED that the clerk shall issue notice to Defendant, Tsephanyah Hawkins a/k/a Russell Owen, Jr., to appear, and Defendant is ORDERED to appear in person, before this Court in the courthouse at Baird, Texas, on October 22, 2003, at 1:30 p.m. The purpose of the hearing is to determine whether, while this case is pending:

1. The Court should order the Appointment of a Receiver
2. The Court should make all other and further orders respecting the property and the parties that are pleaded for or that are deemed necessary and equitable.

3. The Court should continue the temporary restraining order as a permanent injunction or whether the temporary restraining order should be modified, or if any need exists for a restraining order.
4. The Court should consider the Plaintiff's proprietary interest in the business.

IT IS FURTHER ORDERED that the Defendant shall bring verification of the current status of the corporate entity, bank statements from the beginning date of the business to present, and tax returns from the beginning date of the business to present, and receipts for the building of his personal house and commercial building referenced in the petition.

IT IS FURTHER ORDERED that any person eighteen years of age or older who is not a party to or interested in the outcome of this case may serve any citation, notice, or process in this case.

SIGNED on Oct 10, 2003 at 8:45 A.M.

s/ John W. Weeks
JUDGE PRESIDING